

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

EGENERA, INC.,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

Civil Action No. 1:16-cv-11613-RGS

JURY TRIAL

CISCO SYSTEMS, INC.'S MOTION TO EXCLUDE

In order to streamline the trial presentation to the jury, and to allow Cisco to make its full objection on the record, Cisco respectfully submits this motion to exclude PX-BJM from admission at trial. PX-BJM is Exhibit 23 to Dr. Jones's report. The exhibit contains Dr. Jones's analysis of Cisco's source code and Dr. Jones's opinions on how the source code meets certain claim limitations. *See Jones Infringement Rpt., Ex. A at 154* ("Exhibit 23 to this report includes additional detail on the underlying source code (and network analysis) and further applies the code and accompanying analysis to the '430 Patent claim elements."). On August 4, 2022, Egenera disclosed that it intends to offer PX-BJM as an exhibit during the examination of Dr. Jones. Cisco objects that PX-BJM "is a quintessential example of hearsay." *Jones ex rel. U.S. v. Massachusetts Gen. Hosp.*, 780 F.3d 479, 494 (1st Cir. 2015) (affirming exclusion of appendix to expert report proffered as support for expert's trial testimony and conclusions). The parties raised this dispute via email to the Court and the clerk informed the parties that the Court overruled Cisco's objection and would allow Egenera to admit PX-BJM as an exhibit. This took place off the record. Cisco therefore respectfully submits this motion to exclude.

Dated: August 6, 2022

/s/ Jonas R. McDavit

John M. Desmarais (admitted *pro hac vice*)
jdesmarais@desmaraisllp.com
Jonas R. McDavit (admitted *pro hac vice*)
jmcdavit@desmaraisllp.com
Tamir Packin (admitted *pro hac vice*)
tpackin@desmaraisllp.com
Peter C. Magic (admitted *pro hac vice*)
pmagic@desmaraisllp.com
Jamie L. Kringstein (admitted *pro hac vice*)
jkringstein@desmaraisllp.com
Michael R. Rhodes (admitted *pro hac vice*)
mrhodes@desmaraisllp.com
Carson Olszeski (admitted *pro hac vice*)
colsheski@desmaraisllp.com
DESMARAIS LLP
230 Park Avenue
New York, NY 10169
Telephone: (212) 351-3400
Facsimile: (212) 351-3401

Kevin G. Kenneally (BBO # 550050)
Kevin.Kenneally@leclairryan.com
LECLAIRRYAN
One International Place, Suite 1110
Boston, Massachusetts 02110
Telephone: (617) 502-8220

Counsel for Defendant Cisco Systems, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on August 6, 2022.

/s/ *Jonas R. McDavit*